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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1974

No. 74-876

IOANA DRAGANESCU, et al.,

Petitioners,

vs.

FIRST NATIONAL BANK OF HOLLYWOOD

Respondent

REPLY OF PETITIONERS TO BRIEF IN OPPOSITION

John R. Vintilla
550 Hanna Building
Cleveland, Ohio 44115
Counsel for Petitioners

IN THE SUPREME COURT OF THE UNITED STATES
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It is unfortunate that the constitutional significance of the issues involved is misapprehended, and, moreover, that the Respondent persists in misrepresenting certain facts of record to the courts.

In the brief in opposition filed with this court, the Respondent states at page 4 thereof,

> "The Petition is much ado about nothing, namely, the trial court's exercise of its judicial discretion in disqualifying one of the Petitioners' three attorneys of record from acting as trial counsel where he was to give material testimony for the Petitioners." (underscoring ours)

On page 5 of the Respondents' brief which it filed with the Court of Appeals, it is stated:

> "For quite some time now the record of these proceedings will reflect that besides Mr. Vintilla, two other attorneys

> have appeared as counsel of record for the Appellants. Those are attorneys Mr. William E. Allison of St. Petersburg, Florida, and Mr. John Carlon of Fort Lauderdale, Florida."

Let us examine the record.

The Respondent filed a motion in the District Court to dismiss Petitioners' complaint for the reason that attorney William E. Allison, whose name was submitted as local counsel by the Petitioners, was a resident of St. Petersburg, Florida, and not a member of the bar of the United States District Court for the Southern District of Florida as required by local rule 10 (D) (2). The District Court granted the Respondent's motion and gave Petitioners (plaintiffs) "...15 days to comply with Local Rule 10 (D) (2) by designating a member of the bar of this court, residing in this district, upon whom notice and papers may be served." (see Appendix hereto, page 6) The name of John T. Carlon, Jr., of Fort Lauderdale, Florida, was submitted to the court in compliance therewith. During the pre-trial conference, Mr. Carlon stated relevant hereto, as follows:

> "Well, Your Honor, let me preface my remarks stating this: I have not had very much contact with the plaintiffs' attorney. It was my understanding that my appearance was merely to be a token one to satisfy the requirements of the local rule."
> (underscoring supplied). (see page 20 of petition for writ of certiorari).

On June 4, 1974, the Clerk of the District Court was instructed to remove the name of William E. Allison as counsel of record for the plaintiffs. (see Appendix hereto, page).

It is true that the Petitioners, through inadvertence, omitted portions of the pre-trial order in the appendix to the petition herein; however, the material parts of said order were annexed. Counsel realized the omissions immediately after sending the petition to be filed in this court, and promptly wrote the Clerk on January 15, 1975, about them, and enclosed a true and complete copy of the order with a request that it be filed in the cause. The court was further advised that counsel for the Respondent was requested to attach a true copy of the pre-trial order to the brief in opposition. (see Appendix hereto, page10). On the same date, a letter was sent to counsel for the Respondent advising him about the omissions of the pre-trial order, and suggesting that a correct copy of that order be attached to his response to the petition. (see Appendix, page11).

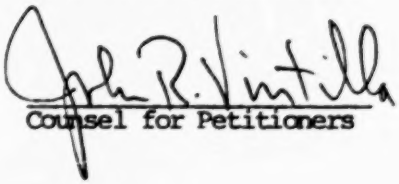
The Petitioners did not include in their appendix to the petition the trial court's order overruling the motion to amend the pre-trial order. It is annexed hereto in the Appendix at page 7.

Thus, we see, the record reveals clearly and emphatically that the Petitioners' case was entrusted to, and was prepared by and is being prosecuted on the sole responsibility of the attorney who was excluded by the court. His removal, the record shows, will amount to a denial to the Petitioners of the right to a lawyer of their choosing who is willing and able to protect and preserve their rights in the unusual circumstances of their status and situation. The constitutional right of a litigant to a competent lawyer of his choosing, in a civil as well as a criminal case, is well established by the decisions of this court. The decisions being challenged in this

proceeding have violated this basic right, we believe. The issue thus presented to this court is whether the Petitioners' constitutional right to select and have the benefit of legal counsel of their own choosing may be denied to them under the facts and circumstances of the instant cause. The judicial effect of the provisions of the Code of Ethics vis-a-vis the constitutional safeguards in the administration of justice is an issue which should command the attention of this court.

We urge the Court to grant the petition.

Respectfully submitted,



Counsel for Petitioners

CERTIFICATE OF SERVICE

A true copy of the foregoing Reply to the Respondent's Brief in Opposition was mailed to Shirley Z. Lubetkin, attorney for Respondent, this day of April, 1975.

Counsel for Petitioners

APPENDIX

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 72-809-Civ-NCR

IOANA DRAGANESCU, et al)
Plaintiffs)
)
vs.)
) ORDER
FIRST NATIONAL BANK OF)
HOLLYWOOD, and JAMES F.)
SCHWEIKERT)
Defendants)

THIS CAUSE is before the Court on Defendants' Motions.

Upon consideration of the record in the cause, it is

ORDERED AND ADJUDGED that:

1. First National Bank of Hollywood's Motion to dismiss is hereby granted. The plaintiff shall have twenty (20) days from the date of this Order within which to file an Amended Complaint.

2. The Motion to Strike the Plaintiff's claim for attorney's fees is hereby granted.

3. The Motion to Strike the claim for punitive damages is hereby denied without prejudice to renew prior to trial.

4. James F. Schweikert's Motion to Strike is hereby denied.

5. The Motion to require Plaintiff to designate local counsel is hereby granted. The plaintiff shall have 15 days to comply with Local Rule 10 (D) (2) by designating a member of the bar of this court, residing in this district, upon whom notice

and papers may be served.

DONE AND ORDERED at Miami, Florida, this 5th day of February, 1973.

/s/ Norman C. Roettger
UNITED STATES DISTRICT COURT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 72-809-Civ-NCR

IOANA DRAGANESCU, et al	)	
	)	
vs.	)	
	)	ORDER
FIRST NATIONAL BANK OF HOLLYWOOD, et al	)	
	)	
	)	

THIS CAUSE is before the Court on Plaintiff's Motion to Amend the Pretrial Order to allow John R. Vintilla to participate in the trial both as plaintiff's attorney and as a witness.

The plaintiff has filed a lengthy brief citing cases which do little more than reiterate the clear provisions of Canon 5. [See D.R. 5-102(a) and 5-101 (B) (1-4)]. The brief recites no factual matters whicy indicate any particular hardship on the attorney's client other than the assertion that the attorney speaks Romanian and is familiar with foreign law. The relevancy of these facts is unclear since the attorney has frequently asserted that plaintiffs, seemingly the only non-U.S. citizens involved in this case, have little, if any, real knowledge concerning this case. Additionally, with one possible minor exception, no Romanian law will be involved in this case.

The attorney's second contention is a bootstrap argument that since he has peepared the case he is the most familiar with the facts and thus best qualified to handle it. This may be true; however, it only points out that Mr. Vintilla should have withdrawn when it became obvious that his testimony was needed, as is required by Canon 5.

The Court further notes that from exhibit 2, attached to plaintiff's motion, it is clear that his testimony is material in this case and that it does not relate to a mere formality.

Therefore, it is

ORDERED AND ADJUDGED that said Motion is denied.

DONE AND ORDERED this 23 day of March, 1974.

/s/ Norman C. Roettger
United States District Judge

June 4, 1974

United States District Court
Office of the Clerk
301 North Andrews Avenue
Fort Lauderdale, Florida 33301

Attention: Rose Ranno, Deputy Clerk

Re: Ioana Draganescu et al v. First National Bank of Hollywood, et al., No. 72-809-CIV-NCR

Dear Madam:

This is to advise you that William E. Allison, Esquire of St. Petersburg, Florida, is not one of counsel for the plaintiffs, or in any way associated with this cause on behalf of the plaintiffs. His name was submitted initially to serve as local counsel, but because of your local rule requiring counsel to be a resident of the District, he could not serve in this capacity. He was, therefore, replaced with John T. Carlon, Jr., Esquire.

Kindly remove the name of William E. Allison as counsel of record for the plaintiffs.

Your aid and kind attention are appreciated.

Sincerely yours,

John R. Vintilla

January 15, 1975

Supreme Court of the United States
Office of the Clerk
Washington, D. C. 20543

Re: Ioana Draganescu, et al v. First National Bank of Hollywood, Petition for Writ of Certiorari

Gentlemen:

After sending you the 40 copies of the petition in the above-entitled matter, I learned that there are serious omissions in the ptr-trial order which is appended to the petition at page 20, 21.

I have enclosed herewith a true and complete copy of that order to be filed in this matter. If there is anything which I must do in this connection, please advise and I shall comply forthwith.

Your aid and kind attention are appreciated.

Sincerely,

John R. Vintilla
Attorney for
Petitioners

P.S. I have asked counsel for the respondent to attach a true copy of the pre-trial order to his response to the petition.

January 15, 1975

Jack F. Weins, Esquire
Attorney at Law
P. O. Box 650
Hollywood, Florida 33022

Re: Draganescu, et al v. First National Bank of Hollywood

Dear Jack:

The pre-trial order annexed in the appendix of our petition for certiorari is incorrect in that it has serious omissions. I would suggest, therefore, that you attach a correct copy of that order to your response.

In any event, I have notified the court of this problem and shall await their reply. Please let me know whether you will do as suggested.

Sincerely,

John R. Vintilla